

## **§ 930.86**

(c) Affect or impair any rights or remedies of the Secretary or any other person with respect to any such violation.

## **§ 930.86 Duration of immunities.**

The benefits, privileges, and immunities conferred upon any person by virtue of this part shall cease upon its termination, except with respect to acts done under and during the existence of this part.

## **§ 930.87 Agents.**

The Secretary may, by designation in writing, name any officer or employee of the United States, or name any agency or division in the U.S. Department of Agriculture, to act as the Secretary's agent or representative in connection with any provisions of this part.

## **§ 930.88 Derogation.**

Nothing contained in this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the Act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

## **§ 930.89 Personal liability.**

No member or alternate member of the Board and no employee or agent of the Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate member, employee, or agent, except for acts of dishonesty, willful misconduct, or gross negligence.

## **§ 930.90 Separability.**

If any provision of this part is declared invalid or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

## **7 CFR Ch. IX (1-1-04 Edition)**

## **§ 930.91 Amendments.**

Amendments to this subpart may be proposed, from time to time, by the Board or by the Secretary.

## **§ 930.100 Grower diversion certificates.**

(a) In accordance with paragraph (b) of this section, the Board may, for the 1997 crop year, issue diversion certificates to growers, in districts subject to volume regulation (Northwest Michigan, Central Michigan, New York, and Utah) who have voluntarily elected to divert in the orchard all or a portion of their 1997 tart cherry production which otherwise, upon delivery to handlers, would become restricted percentage cherries. Growers may offer the diversion certificate to handlers in lieu of delivering cherries.

(b) *Terms and conditions.* To be eligible to receive diversion credit, growers voluntarily choosing to divert cherries must meet the following terms and conditions:

(1) In order to receive a certificate, a grower must demonstrate, to the satisfaction of the Board, that rows or trees which were selected for diversion were not harvested. Trees six years old or younger do not qualify for diversion.

(2) The grower must furnish the Board with a total harvested production amount so the Board can calculate the amount of grower diversion tonnage to be placed on the diversion certificate. The Board will confirm the grower's production amount with information provided by handlers (to which the grower delivers cherries) on Board Form Number Two.

(3) The grower must agree to allow a Board compliance officer to visit the grower's orchard to confirm that diversion has actually taken place.

(c) *Calculation of diversion amounts.* The weight of cherries diverted and left unharvested shall be calculated by the Board after growers furnish the Board with the necessary information concerning their production. After verification of the volume of cherries diverted, the Board shall calculate the amounts of grower diversion tonnage to be placed on the diversion certificates and issue such certificates to growers. Such amounts shall be determined as follows:

(1) For whole block diversion, the weight of a harvested sample of 5 percent of each diverted block, provided by the grower, will be used to calculate the total volume of diverted cherries to be credited on the diversion certificate. For example, a grower farms 1,000 acres and elects to whole block divert a 200 acre block. If 5 percent of the harvested trees in the block diverted yield 80,000 pounds of cherries, the grower would receive a diversion certificate for 1,600,000 pounds (80,000 pounds divided by 5 percent (.05) yields 1,600,000 pounds). The rest of the block would remain unharvested.

(2) For random row diversion, such estimated volume would be calculated by applying the percentage of the grower's production diverted to the actual average volume per acre of cherries produced and harvested. For example, a grower farms 1,000 acres and elects to divert 20 percent of the harvestable acreage (200 acres). The grower harvests the remaining 800 acres and obtains 6,400,000 pounds of cherries, which represents a yield per acre of 8,000 pounds. Such grower would receive a diversion certificate for 1,600,000 pounds of cherries (8,000 lbs multiplied by the 20 percent of the total acreage diverted; in this instance, 200 acres).

[62 FR 44883, Aug. 25, 1997, as amended at 63 FR 20023, Apr. 22, 1998]

#### § 930.120 Board membership.

Pursuant to § 930.20(e), membership of the Cherry Industry Administrative Board is increased from 18 to 19 members and alternates. There will be one grower and one handler member from District 8.

[66 FR 35891, July 10, 2001]

### Subpart—Administrative Rules and Regulations

#### § 930.133 Compensation rate.

A compensation rate of \$250 per meeting shall be paid to the public member and to the alternate public member when attending Board meetings. Such compensation is a per meeting rate. For example, if a Board meeting is convened and lasts one or two days or only four hours, the public

member and/or alternate public member attending the meeting would receive \$250 each.

[63 FR 33528, June 19, 1998]

#### § 930.141 Delinquent assessments.

(a) Pursuant to § 930.41, the Board shall impose an interest charge on any handler whose assessment payment has not been received by October 1 of each crop year. The interest rate shall be a rate of one percent per month and shall be applied to the unpaid assessment balance not paid by the October 1 due date. In addition to the interest charge, the Board shall impose a late payment charge on any handler whose assessment payment has not been received within 90 days from the due date of October 1. The late payment charge shall be 10 percent of the unpaid balance.

(b) [Reserved]

[62 FR 55150, Oct. 23, 1997, as amended at 63 FR 14024, Mar. 24, 1998]

#### § 930.158 Grower diversion and grower diversion certificates.

(a) *Grower diversion certificates.* The Board may issue diversion certificates to growers in districts subject to volume regulation who have voluntarily elected to divert in the orchard all or a portion of their tart cherry production which otherwise, upon delivery to handlers, would become restricted percentage cherries. Growers may offer the diversion certificate to handlers in lieu of delivering cherries. Handlers may redeem diversion certificates with the Board through November 1 of each crop year. After November 1 of the crop year that crop year's grower diversion certificates are no longer valid. Cherries that have reached a harvestable, marketable condition will be eligible for diversion. Diversion will not be granted to growers whose fruit was destroyed before it set and/or matured on the tree, or whose fruit is unmarketable. If marketable fruit were to be damaged or destroyed by acts of nature such as storms or hail diversion credit could be granted.

(b) *Application and mapping for diversion.* Any grower desiring to divert